IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 477 OF 1992

Ms. Sujatha Venkatramanan .. Applicant.

V/s.

Shri Prakash Khanderao Murkute & Ors. .. Respondents.

Shri Yogesh Israni with Subodh Desai i/by M/s. Ramesh Makhija & Co. for the Applicant.
Ms. Sonia Miskin h/f. N.B.Shah for Respondent No.1.
Shri Avinash B.Avhad for Respondent No.2.

CORAM : A.M.KHANWILKAR, J.
DATED : MARCH 22, 2005

PC :-

1. Heard counsel for the parties.

2. This petition takes exception to the order passed by the J.M.F.C. Cantt. Court, Pune dated January 28, 1992 below Exh. 39 in Regular C.C. No 486/1991.

3. The Applicant before this court is named as accused No.3 in the original criminal case, pending before the concerned Magistrate. During the course of the trial, the complainant made application before the concerned Magistrate for production of the vehicle in

question before the court. The court acceded to that prayer and issued direction to the accused in particular, the applicant herein, to produce the vehicle in question before the court and also for production of the the accused No.3, the applicant herein, in the court.

4. Having considered the rival submissions, the position that emerges from the record is that the stand of the applicant is that the vehicle is already sold on 20th June, 1990. For this reason, it was not be possible to comply with the direction given by the trial court. In spite of this position brought to the notice of the trial court, the court called upon the applicant to produce the vehicle. Besides, it is contended that the recovery of the vehicle in question cannot be made from the applicant, as the applicant was working as Manager of City Bank, which had financed for the vehicle on hire purchase agreement and it does not amount to criminal offence. To buttress this submission reliance is placed on the decision of the Apex Court in the case of Charanjit Singh Chadha vs. Sudhir Mehra , reported in (2001) 7 Supreme Court Cases 417.. It is not necessary for me to go into the wider questions raised by the

applicant. Suffice it to observe that as the applicant has already placed on record that the vehicle in question has been sold to third party. The nature of the direction issued by the trial court, requires the applicant to do something which is not within his control, as the vehicle in question is in the custody of the third party, who has legitimately become owner thereof. Accordingly, the direction given by the trial court to produce the vehicle in the court deserves to be set aside.

5. In so far as the direction, requiring the applicant to appear before the learned trial court, in spite of the earlier order, exempting the applicant from appearance till framing of charge is concerned, it is not necessary to dwell upon that question. The applicant will have to be relegated to the trial court so as to file application for exemption, if so advised, which application will have to be decided on its own merits in accordance with law.

6. As mentioned earlier, I am not inclined to decide the wider question, that no offence is made out as the Bank had offered finance on hire purchase agreement to the complainant. That question is,

however, left open to be decided by the appropriate court as and when occasion arise.

7. Accordingly, this petition succeeds in the above terms.

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